HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 909 of 2007.
Reserved on: 31.10.2007.
Decided on: 7.11.2007.

K.C. Chauhan ..... Petitioner.

Versus

Jai Chand Singha and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the petitioner: Mr.Ajay Kumar, Advocate.

For respondent No.1: Mr.Peeyush Verma, Advocate.

For respondent No.4: Mr.M.S Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J:

This is a writ petition filed under Articles 226 and 227 of the Constitution of India for quashing of the order passed by Additional Registrar, Co-operative Societies, dated 18.6.2007.

Briefly stated the facts of the case are that the petitioner, respondent No.1 and respondent No.2 were elected as Directors of Managing Committee of respondent No.3/Society. The election for the post of the President of the said Society was held on 16.9.2006 in accordance with the provisions of Bye-laws of

---

Whether reporters of local newspapers may be allowed to see the judgment? Yes.

respondent No.3/Society. There were 8 elected members in the Board of Directors of respondent No.3. The petitioner and respondent No.1 contested the election for the post of President and they both polled four votes each. Respondent No.2, who was elected as Chairman to conduct the meeting on that day, exercised his right of casting vote in favour of the petitioner who was thereafter declared elected as President of the Society. An appeal was preferred by respondent No.1 against the said election of the petitioner as President and the Deputy Registrar, Co-operative Societies, vide his order dated 22.11.2006, dismissed the election petition which was filed by respondent No.1. An appeal was preferred by respondent No.1 and the Additional Registrar, Co-operative Societies/respondent No.4, vide his order dated 18.6.2007, accepted the appeal and set aside the election of the petitioner as President of the respondent No.3/Society.

Being aggrieved by the said order passed by the Additional Registrar, Co-operative Societies, the petitioner has filed the present writ petition for quashing of the said order.

Replies to the writ petition were filed by the respondents. We have heard the learned counsel for the parties and have gone through the record of the case.

The facts of the case are not in dispute that four votes each were polled by petitioner and respondent No.1 for the election to the post of President. Respondent No.2 was also amongst the 8 Directors of the Society, who had participated in the elections and had cast their votes also in favour of either of the parties. However, when equal votes were polled by both the parties, the Chairman presiding over the meeting on that day exercised his right of casting vote in favour of the petitioner who was, therefore, elected as President of the

Society. It is, therefore, clear that the Chairman of the meeting (respondent No.2) and one of the Director had cast their votes twice for the election of the petitioner as President of the Society. The action of respondent No.2 in declaring the petitioner elected as President was challenged and the Deputy Registrar, Co-operative Societies, had referred to the provisions of the Act, Rules and Bye-laws, which provide for casting of second vote by the Chairman in case of equal results. In deciding the said petition in favour of the petitioner, the Deputy Registrar, Co-operative Societies had referred to some of the provisions which need to be reproduced as under:

The Deputy Registrar, Co-operative Societies had referred to Sections 20 and 21 of the H.P. Co-operative Societies Act, Rule 45 of H.P. Co-operative Societies Rules, 1971 and had also referred to the provisions of Rule 6 of Appendix A, but had concluded that this provision of Rule 6 of Appendix A to the H.P. Co-operative Societies Rules, 1971 does not apply. The relevant provisions of the Act and Rules may be reproduced as under:

Section 20 of the H.P. Co-operative Societies Act reads thus:

> ***"20. Votes of members:-*** *Every member of a society shall have one vote, in the affairs, of a society: Provided that-*
> *(a) .....*
> *(b) in the case of equality of votes, the chairman shall have a casting vote;*
> *.....″*

Section 21 of the Act is not relevant since it refers to the manner of exercising vote in person or by proxy.

Rule 45 of H.P. Co-operative Society Rules, 1971 reads thus:

> ***"45. Voting in the meeting of the Managing Committee –*** *A resolution which is put to the vote of the committee meeting shall be decided by a majority of votes and if the votes are equal, the Chairman shall have a second, or casting vote.*

Bye-law No.36 of Himachal Pradesh Fruit Growers Co-operative, Marketing and Processing Society Ltd. reads thus:

> *"Meeting of the Board of Directors shall be held when necessary normally at a fixed date periodically. At least 7 days notice of the meeting with complete agenda shall be given to committee members before a meeting is held. Six members shall form quorum of which at least 50% shall be class A members. The President or the Vice President or in his absence a member elected by those present in a meeting shall preside. Unless otherwise provided in these bye-laws, all question shall be decided by the majority of votes. Each member shall have one vote. In case of equality of votes, the Chairman shall have a casting vote."*

Appendix A, Rule 6 of H.P. Co-operative Society Rules reads thus:

> ***"6. Voting –*** *(1) Voting shall be exercised by secret ballot. The Registrar may by general or special order grant exemption from this rule to any co-operative society or any class of co-operative societies.*
>
> *(2) The candidates who secure a majority of votes shall be declared elected by the Returning Officer. If the number of votes in favour of two or more candidates are equal, the Returning Officer shall decide the matter by lot."*

In its order, the Deputy Registrar, Co-operative Societies had observed as under:

> *"The provision of Rule 6 of the Appendix 'A' to the H.P. Cooperative Societies Rules 1971, which pertains to RULES OF ELECTION TO THE COMMITTEE cannot be put to practice in the present case as these are only meant for election of the committee of a society and not that of a President."*

It was further observed by him that Bye-law No.36 of the Bye-law of HImprocess also has provision for the Chairman to have a casting vote in case of equality of votes, in addition to the provision of each member having one vote.

However, on appeal, the Additional Registrar, Co-operative Societies, had also made a reference to the provisions mentioned above and had observed as under:

> *"The appellant has referred to the Rule 37 and, Appendix-A of the H.P. State Co-operative Societies Rules and Section 100 of the Indian Constitution. The appellant has contended that the Section 20 of the Act relates to the voting by members which is analogous to that of casting of vote by chairman or speaker in the houses of Parliament as per Article 100 of Constitution and the casting vote is voted as per Section 20(b) only when there is equality of votes in a resolution and not election. He contended that here the Appendix-A of the Rules is instead applicable where on equality of votes there should have been draw of lots. Further for the applicability of Rule 45, it is the resolution which is put to vote and not the elections. As president was yet to be elected there could not be any resolution of election. He also contended that Rule 45, if applied to elections will be against the provisions of Section 21 of the Act, providing for 'one member one vote' and hence not applicable."*

It was finally observed by the Additional Registrar, Co-operative Societies that Section 20 and 21 of the H.P. Co-operative Societies Act refer to the conduct of business, meeting and resolutions put to vote and not elections of office bearers or the president itself. It was further observed by the Additional Registrar, Co-operative Societies, as under:

> *"Further Sections 20 and 21 of H.P. Co-operative Societies Act refer to the conduct of business, meeting and resolutions put to vote and not election of office bearers or the President itself. Where in a 'resolution' the theme before the electorate or the voters is to accept or reject the resolution in a decision of "yes or no"; in elections there is an alternative to be voted and elected. The mode of passing of a resolution thus is not to be equated with that of voting in elections. Further Subsection 5 of Section 4 of the Appendix-A of the Rules, indicates election to an office that will mean and include election of an office bearer or the President as the office of a managing committee is nothing but that of such office bearers including President or Vice-President and others. Section 6 of the aforementioned Appendix A of the*

Rules, mention the applicability of the draw of lots in case of equality of votes."

It is, therefore, clear from the above discussion that at one place in case of tie or equal votes having been cast, the reference has been made to second vote or casting vote by the Chairman. In another provision mentioned above, the term used is 'by draw of lots'. It has to be considered as to which of the provisions are applicable to the election of the President. Section 20 of the Act refers to the fact that every member of a Society shall have one vote in the affairs of a Society and in case of equal votes, the Chairman shall have a casting vote. It cannot be disputed that the voting of members will be required in two types of meetings; once when the elections of President or Vice President are to take place and secondly, in case of day to day working, when there is a dispute as to any of the resolutions passed at a meeting then the discretion has to be exercised by the Chairman by having a casting vote. Section 20 of the Act, which is to prevail over the Rules, refers to the affairs of the Society and does not specifically refers to the election of the President or the Vice President.

Rule 45 of the Rules framed under the provisions of the Act, as mentioned above, refers to a resolution which is put to the vote of the Committee meeting in which the Chairman shall have a second or casting vote. Both these provisions of Section 20 or 45 do not refer anything in regard to election of the President or the Vice President in such a meeting.

The term 'Chairman' has been defined in Appendix-A, 1(b) to the H.P. Co-operative Societies Rules, 1971, which reads as under:

"(b) "Chairman" a person appointed by the Registrar to preside over a general meeting held for the purpose of election, and if no such person is appointed, then the President/Chairman and in his absence the Vice-President/Vice-Chairman and in

the absence of both, the person elected by the members present to preside over that meeting;"

It is, therefore, clear that normally the Chairman is a person appointed to preside over a general meeting held for the purpose of election and if no such person is appointed, then the President/Chairman and in his absence the Vice President/Vice Chairman or the person elected by the members present to preside over that meeting can be called as Chairman. This definition gives a wider meaning to the term Chairman and normally a Chairman is a person who has been appointed by a resolution to preside over a general meeting held for the purpose of election. The rules framed by the Co-operative Society/respondent No.3 and Rule 36 mentioned above also refers to the meeting of Board of Directors in which the Chairman shall have a casting vote and it is clear that it refers to the meeting to be presided over by the President or Vice President or in his absence, a member elected by resolution by those present in the meeting shall preside over. It means that such meeting shall have reference to the business of the Society when the President or Vice President has already been elected. In that eventuality, the casting vote has been given to the Chairman for day to day working. However, no specific provisions have been pointed out by the learned counsel for the petitioner in regard to election of the President or Vice President if these are provided in the Act or Rules. However, Rule 6 under Appendix A mentioned above refers to voting and the meeting which is to be presided over by the Chairman and it refers to voting by secret ballot, which can only be for the elections and not for the day to day working of the Committee. It refers to the question that if the number of votes in favour of two or more candidates are equal, the Returning Officer shall decide the matter by lot.

From a combined reading of the provisions, it can be inferred that in day to day working in case of any dispute, the Chairman, who is presiding over any such meeting for conducting the affairs of the Committee, may exercise his right of casting a second vote or by casting his vote once again. The vote can be cast twice in day to day working, but in so far as elections to the post of President or Vice President are concerned, it cannot be said that person who is appointed as Chairman to conduct the meeting has right to vote twice which can be said to be against all canons and principles of natural justice since that person appointed may be having proximity to either of the candidates and once he is elected as Chairman, he is getting right to cast vote twice, which can be said to be against the principles of natural justice.

During the course of the arguments, a reference was also made to the provisions of Article 100 of the Constitution of India, which are relevant and the provisions of Article 100 (1) of the Constitution may be reproduced as under:

> *"(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.*
>
> *The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes."*

It is, therefore, clear from a perusal of this provision of the Constitution also that the Speaker does not exercise his right to vote in the first instance and in case of equality of votes, he has got a right of casting a vote. It does not refer to the conclusion that the Chairman can exercise his right twice and once the Chairman under the provisions of the Constitution of India had not exercised his right earlier, but exercised his right in the event of equality of votes, this

procedure can be said to be correct and in conformity with the provisions of the Constitution.

Accordingly, it follows that the provisions of Appendix A are applicable and the Chairman or respondent No.2 cannot cast the vote second time but the procedure to be adopted was by draw of lots, which was not adopted and, therefore, the order passed by the Additional Registrar, Co-operative Societies can be said to be in conformity with the provisions of the Act, Rules framed under the Act and the Bye-laws framed by the Society as well as in conformity with the Article 100 of the Constitution of India and those findings are correct and do not call for an interference by this court. The writ petition filed by the petitioner is dismissed with no order as to costs.

CMP No.1557 of 2007:

In view of the dismissal of the main petition, this application also stands dismissed.

(Deepak Gupta), J.

(V.K. Ahuja), J.

November 7, 2007. (TILAK)